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ASIAN RARE EARTH SDN. BHD.

v.

WOON TAN KAN & ORS.

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SUPREME COURT, KUALA LUMPUR
ANUAR ZAINAL ABIDIN ACTING CJ (MALAYA)
MOHD. YUSOF MOHAMED SCJ
EUSOFF CHIN SCJ
[SC CIVIL APPEAL NO. 02-313 OF 1992]
5 AUGUST 1992

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CIVIL PROCEDURE: *Injunction - Injunction, application to set aside - Whether injunction would cause hardship - Whether an appropriate relief.*

This is an application by the appellant seeking an order to suspend the injunction granted against them by the High Court pending the conclusion of their appeal in the Supreme Court.

Held:

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[1] Allowing the injunction to operate before the appeal is heard and disposed off would cause harm to the appellant and hardship to its workers.

[2] The High Court Judge found the appellant had committed the tort of nuisance. It is strongly contentious whether an injunction would be the correct remedy for nuisance.

[Application allowed. Injunction set aside with costs in the cause.]

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[Bahasa Malaysia Translation of Headnotes]

PROSEDUR SIVIL: *Injunksi - Injunksi, permohonan untuk mengetepikan - Samada injunksi akan menyebabkan kesukaran - Samada suatu relief yang wajar.*

Ini adalah permohonan oleh perayu bagi mendapatkan perintah bagi menggantung injunksi yang dikeluarkan terhadap mereka oleh Mahkamah Tinggi sementara menunggu keputusan rayuan mereka ke Mahkamah Agong.

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Diputuskan:

[1] Membenarkan injunksi berkuatkuasa sebelum rayuan didengar dan diputuskan akan menyebabkan kemudaratan kepada perayu serta kesusahan kepada pekerja-pekerja perayu.

[2] Hakim Mahkamah Tinggi mendapati bahawa perayu telah melakukan tort kacau ganggu - Ianya sangat boleh dipertikaikan samada injunksi merupakan remedi yang betul bagi kacau ganggu.

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[Permohonan dibenarkan. Injunksi diketepikan dengan kos dalam kausa]

For the appellant - Cecil Abraham (Harcharan Singh with him); M/s. Chong, Harcharan, Hashim
For the respondents - G.S. Nijar; M/s. Meena Thayalan & Partners

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JUDGMENT

Mohd. Yusof Mohamed SCJ:

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The present application before the Court today is simply that the appellant in this case the Asian Rare Earth Sdn. Bhd. (ARE) is seeking an order to suspend the injunction granted against ARE on 11 July 1992 by the High Court in Ipoh pending conclusion of their appeal herein. The injunctions in effect ordered the factory operated by ARE to be closed within fourteen days of the order.

We have heard both of the Counsel's submissions for the appellant and the respondent at length and we note that:

- (a) The joint venture factory between Mitsubishi and the local partners have been operating since 1979.
- (b) At present there are 183 people employed by the factory;
- (c) It is not possible to switch off the entire manufacturing process of the factory to a complete halt on the date of the order because of many stages involved in the operation of manufacturing process;
- (d) The mandatory injunction to remove toxic waste and radioactive waste within a period of fourteen days is not adequate as this removal involves scraping of the plant which has been in operation for more than twelve years.

These factors alone to our mind would cause harm to the appellant and hardship to its workers if injunctions were allowed to operate before the appeal is heard and disposed of.

There is also another factor which has caused some apprehensions on our part against allowing the injunctions to stay.

The learned Judge has not found the appellant to have been negligent in any manner in storing or disposing its toxic or radioactive waste. In his written judgment the learned Judge has found the appellant has committed the tort of nuisance based on the celebrated principle of *Rylands v. Fletcher*. In our view it is strongly contentious whether injunction would be the correct remedy for nuisance.

For these reasons, we would allow this application.

Before we part with this case we regret to note that one of the respondents, Lau Fong Fatt, has gone beyond the process of the Court to approach Mitsubishi Corporation which is one of the major shareholders of the appellant company in order not to proceed with this application or to appeal against the High Court decision.

We don't know what has gone behind the scene that enabled Mr. Lau to obtain an assurance from Mitsubishi Corporation that regardless of this Court ruling it will not operate the factory without the consent of the community i.e. the respondents.

In this regard we would strongly advise the respondents again that in coming to this Court they should refrain themselves from resorting to extra-judicial process be it political or diplomatic to influence the Court's proceedings. One must always bear in mind that it is through the judicial process that the rights of the individuals are made effective.

The Courts as a branch of the Government exists for that purpose and this is where individuals may come to seek justice not as a matter of privilege but as a matter of right. This is the law in this country and the Court would not view kindly any form of pressure from any party in order to influence its decision.

Also found at [1992] 4 CLJ 2207

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